IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Narain Ram & ors. Vs. Nanu Khan & others

S.B.CIVIL MISC. APPEAL NO.433/1994

Against the award dated 15.04.1994 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.123/1990.

Date of Judgment : 18.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.S.K.Sankhla for Mr.Rajesh Panwar for the appellants
Mr.Arjun Singh for Mr.Sangeet Lodha for the respondent No.2.

BY THE COURT:

This is claimants' appeal seeking enhancement over the amount of Rs.80,000/- awarded by the Motor Accidents Claims Tribunal, Jodhpur in its award dated 15.04.1994 made in Claim Case No.123/1990 as lump sum compensation on account of accidental death of Puna Ram Jat, aged about 30 years, son of claimants Nos.1 and 2, husband of claimant No.3 and father of claimants Nos.4 to 7.

Brief facts relevant for determination of the questions involved in this appeal are that on 03.03.1990 at about 8.20 on Bilara-Jodhpur road near Dantiwara-Bhomiyaji Ka Thana, a tractor bearing registration No.RNT 6574 driven by the deceased Puna Ram Jat was hit from behind by a bus bearing registration No.RNP 1952 driven by non-applicant No.1 Nanu Khan and belonging to non-applicant No.2 Rajasthan State Road Transport Corporation; Puna Ram was thrown out of the tractor and was crushed beneath the tyres of the bus and died on the spot.

Narrating the incident aforesaid and stating the liability of the non-applicants towards compensation, the claimants averred for quantification of compensation that the deceased was 28 years and was earning Rs.2,000/- per month by plying the aforesaid tractor of his father, by working as part time contractor and so also by cultivating his 42 bighas of land. The non-applicants contested the claim application, inter alia, with the submissions that the accident occurred for the negligence of the deceased himself. The quantum of compensation claimed was also put to contention.

After framing of necessary issues and taking the evidence adduced, the Tribunal proceeded to find that the

accident occurred for rash and negligent driving of the bus in question that resulted in death of Puna Ram and held the respondents liable for compensation.

Taking up quantification of compensation in issue No.2 the Tribunal observed that age of the deceased was stated at 30 years in post mortem report and that the agricultural land belonging to the deceased Puna Ram was unirrigated land. There being no other cogent evidence about income of the deceased, the Tribunal considered it appropriate to take his income at Rs.1,200/- per month and contribution for the claimants at Rs.800/- per month but then abruptly observed that by allowing Rs.80,000/- as compensation his dependents would be getting Rs.800/- per month as interest and that would effectively make up the loss caused to them because of death of Puna Ram and, therefore, held the claimants entitled for compensation in the sum of Rs.80,000/-. No other compensation on any other count was allowed. The Tribunal of course allowed interest at the rate of 12% per annum from the date of filing of claim application.

Assailing the award aforesaid, learned counsel for the claimant-appellants has strenuously contended that the Tribunal has been seriously in error in making the award in

lump sum of Rs.80,000/- without proper assessment of loss on the basis of relevant principles and the amount awarded by the Tribunal being too low and grossly inadequate calls for modification by enhancement. Learned counsel for the contesting respondent has duly supported the impugned award with the submissions that though the award has been made in lump sum but ultimate amount allowed to the claimants cannot be said to be too low so as to warrant interference in appeal.

Having given thoughtful consideration to the rival submissions and having scanned through the entire record, this Court is clearly of opinion that the award on its quantification of compensation remains grossly inadequate and deserves suitable upward revision.

So far the observations made by the learned Judge putting estimate on monthly income of the deceased at Rs.1,200/- are concerned, the same appear justified particularly when no cogent proof of the income of the deceased has been adduced; and when major part of his income has been alleged by way of agriculture, substantial portion thereof obviously retains itself to the claimants and could not have been taken towards loss, therefore, estimate

of loss of dependency at Rs.800/- per month also appears reasonable. However, the Tribunal has thereafter fallen in serious error in abruptly concluding that a particular amount of Rs.80,000/- in lump sum be awarded to the claimants.

This Court is clearly of opinion that the award of compensation ought to have been made on some rationale and particularly when the figure of monthly loss of contribution had already been arrived at, the Tribunal ought to have calculated the pecuniary loss on relevant principles. The deceased was admittedly 30 years of age and has left behind seven dependents including four minor children, wife and parents. On the facts of this case even reduction on personal expenditure could have been considered lesser than one-third of his earning but in view of the claimants failing to lead cogent evidence and then a part of the income retaining itself to them, such deduction of one-third is not interfered with, however, in view of the age of the deceased and that of the claimants, a multiplier of 16 could definitely be provided on the multiplicand of Rs.9,600/- (Rs.800/- x 12) and thereby pecuniary loss itself stands at Rs.1,53,600/- (Rs.9,600/- x 16). The Tribunal has obviously been in error in taking pecuniary loss only at Rs.80,000/-. The claimants have further not been allowed any amount towards non-pecuniary loss and in

the circumstances of the case, the wife of the deceased deserves to be allowed Rs.10,000/- towards loss of consortium and other claimants Rs.5,000/- each towards loss of love, affection, guidance and services of the deceased. The claimants deserve to be allowed another sum of Rs.1,400/- towards funeral expenses and in this manner the claimants are entitled for compensation even on a conservative estimate in the sum of Rs.1,95,000/- (1,53,600/- + 40,000/- + 1,400). The lump sum award made by the Tribunal only for Rs.80,000/- obviously falls too short of just and reasonable compensation and deserves modification.

In view of the discussion aforesaid, the claimants are held entitled for compensation in the sum of Rs.1,95,000/- and, therefore, shall be entitled for a further amount of Rs.1,15,000/- over the above the amount of Rs.80,000/- awarded by the Tribunal. Of course the Tribunal has awarded interest on the award amount at the rate of 12% per annum but in view of substantial enhancement being made herein, it is considered appropriate to allow interest on the enhanced amount at the rate of 6% per annum from the date of filing of the claim application.

In the result, this appeal succeeds and is partly allowed. The impugned award dated 15.04.1994 is modified and in place of the amount of Rs.80,000/- the claimants are awarded compensation in the sum of Rs.1,95,000/-. The claimants shall, therefore, be entitled for further amount of Rs.1,15,000/- over and above the amount awarded by the Tribunal and shall be entitled for interest at the rate of 6% per annum on this enhanced amount from the date of filing of claim application.

The amount payable under the modified award shall be deposited by the respondent No.2 within 30 days from today with the Tribunal and the Tribunal shall carry out apportionment and disbursement amongst the claimants. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI),J.

MK